THE LEGALITY OF CORPORATE VOTING TRUSTS AND POOLING AGREEMENTS.

The inclination of the early authorities was to condemn all attempts to tie up a majority of the stock of a corporation by a surrender on the part of stockholders of their voting power, and both voting trusts and pooling agreements were frowned upon as illegal.[1]

The tendency of rules of law, however, is to follow economic and industrial necessities. This is especially true in the law of private corporations, and to the credit of the courts, in general they have responded in an elastic and willing manner so as to adjust corporate conceptions to economic and social facts and developments.[2] Accordingly, in the course of time, the courts came to recognize the desirability of sanctioning voting trusts and pooling agreements whereby the control of the corporation might be secured for the support of a continuous policy of management, or for the development of a sound method of administration of corporate affairs, or for the successful working out of a reorganization plan.

For example, suppose a majority of the stockholders of a corporation desire to work in harmony in order to establish and develop a certain continuing corporate policy. Such a result might be achieved, perhaps, by an agreement between stockholders to vote together. Or, better still, it might be achieved through an agreement by which proxies are given to certain trustees with power to vote the proxies as they may be directed or may determine. Or, best of all, through an agreement by which the legal title to the stock is transferred to the trustees with power to vote thereon.[3] When the stockholders, or a portion of them, transfer their shares of stock to the voting trustees, the voting trustees acquire the legal title to the stock and the right to vote the stock,

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[1]Two typical cases are Bostwick *v.* Chapman (1890) 60 Conn. 553, 24 Atl. 32 (Shepaug Voting Trust Cases); Harvey *v.* Linville Improvement Co. (1896) 118 N. C. 693, 24 S. E. 489. In the last cited case, Clark, *J.*, a distinguished jurist, said, at p. 699: "In short all agreements and devices by which stockholders surrender their voting powers are invalid. 5 Thompson Corporations, Sec. 6604. The power to vote is inherently annexed to and inseparable from the real ownership of each share, and can only be delegated by proxy with power of revocation." Griffith *v.* Jewett (1886) 15 Wkly. Law Bul. (Ohio) 419; also, paper by Ex-Judge Simeon E. Baldwin 1 Yale Law Journal, 1, *accord.*

[2]See, Piercing the Veil of Corporate Entity, 12 Columbia Law Rev. 496, 517-518.

[3]Clark, Corporations (3rd ed.) 600.

but the stockholders retain the other incidents of beneficial ownership of the stock, and, in return for their stock, trust certificates are given to them, which certificates are ordinarily transferable, just like stock certificates, subject, however, to the terms and conditions of the voting trust agreement.

Again, let us suppose a case where a corporation has fallen into financial straits and the bondholders or their committee are in a position to compel a foreclosure sale. This may occur in cases even where the corporation is solvent but is unable to maintain its interest payments. It stands to reason that the bondholders will not consent to a reorganization of the corporation (and refrain from foreclosure) unless they are given some definite assurance that, in the immediate future, careful management and proper voting control will be insured. The security holders are vitally interested in seeing that a sound, logical and continuing corporate policy will be adopted, which will insure and protect their safety. In order to work out the reorganization of the corporation, it is necessary also to give assurance to the bondholders that men of financial standing and high integrity are to be in charge of the corporate enterprise for the initial period in the future. Under these circumstances, it is clear that the use of the voting trust is most desirable, until such time, at least, when the theoretical security of the bondholders has become actual security. Besides this, the financial interests which undertake the work of reorganization are also interested in seeing that a suitable management is assured in the reorganization of the corporation, since the bankers' own reputations are involved. An unsuccessful reorganization would injure the standing of the bankers. It follows that financial interests would be unwilling to undertake the financing of the work of reorganization unless the continuity and integrity of the control are assured, and this can be achieved most readily and simply through the simple device of the corporate voting trust.

The courts, bearing in mind these practical considerations, had gradually come, for the most part, to sustain the legality of the voting trust agreement, and by the year 1905 or thereabouts, the decided weight of legal authority had come to recognize that there was nothing illegal or contrary to public policy in separating the voting power of the stock from its beneficial ownership.[4]

[4]Smith *v.* San Francisco, *etc.* Ry. (1897) 115 Cal. 584, 47 Pac. 582; Brightman *v.* Bates (1900) 175 Mass. 105, 55 N. E. 809; Boyer *v.* Nesbitt (1910) 227 Pa. 398, 76 Atl. 103. In these cases the authorities generally are collected and adequately summarized.

In some jurisdictions the legality of the voting trust had even obtained statutory recognition. Thus, in New York, in 1892 and 1901, the legislature enacted the following statute, which is now Section 25 of the General Corporation Law:[5]

> "A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or persons shall act; every other stockholder, upon his request therefor, may, by a like agreement in writing, also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and canceled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours."

In Maryland, a similar statute was enacted in 1908.[6]

In 1900, Chief Justice Holmes of Massachusetts, now Mr. Justice Holmes, said:[7]

> "We know nothing in the policy of our law to prevent a majority of stockholders from transferring their stock to a trustee with unrestricted power to vote upon it."

In the same year, 1900, the New Jersey Court of Chancery said:[8]

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[5]Laws of 1892, c. 687, § 20; Laws of 1901, c. 355, § 1, (now Gen. Corp. Law, § 25).

[6]Md. Laws of 1908, c. 240.

[7]Brightman *v.* Bates, *supra,* footnote 4, at p. 111. See also, Elger *v.* Blyle, (1910) 69 Misc. 273, 126 N. Y. Supp. 946, a valuable opinion by the late Justice Bischoff.

[8]Chapman *v.* Bates (1900) 61 N. J. Eq. 658, 666-667, 47 Atl. 638; *cf.,* Warren *v.* Pim (1904) 66 N. J. Eq. 353, 59 Atl. 773 (in this case the court was divided seven to six, and it is submitted that the dissenting opinion by Swayze, *J.,* is the sound one).

> "There is no statutory provision, nor can we perceive any reason offensive to public policy, preventing a stockholder from giving another powers over, or rights in, his shares in a corporation to the same extent that he might give in any property."

In 1910, the Supreme Court of Virginia, in commenting upon the cases which discuss the validity of voting trusts and pooling agreements, said:[9]

> "In considering the cases, however, and the text-writers who have commented upon them, it is impossible not to be impressed with *the change of opinion which has taken place with respect to the true nature of such contracts.* In the early stages of the development of this idea there was a strong sentiment against them which found expression in the opinions of judges and in the not always temperate language of distinguished commentators upon the law; *but experience has demonstrated their usefulness, and the hostility evinced toward them has by degrees diminished.*"

In the years 1912-13, as they now appear in their proper perspective, a crusade began against the use of the voting trust or pooling agreement. The Pujo Committee of 1913, in its report to the House of Representatives, severely condemned voting trusts, and submitted that they should be regarded as illegal *per se,* irrespective of their purposes, objects, or intentions. The committee took the view of the early decisions, declaring broadly that the power to vote should be deemed inseparable from the beneficial ownership of the stock and that any agreement or device by which the stockholders combined to place the voting power of their shares of the stock in other persons, *e. g.,* voting trustees, is illegal and against sound public policy. It should be remarked that no evidence had been introduced *pro* and *con* before the committee, for the purpose of determining whether, in general, voting trusts have been a benefit or a detriment, and whether voting trusts whose propriety and just purpose appear should be condemned.[10]

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[9]Carnegie Trust Co. *v.* Security Life Ins. Co. (1910) 111 Va. 1, 20, 68 S. E. 412. The italics are ours.

[10]Cushing, Voting Trusts, 23 (a valuable treatise).

Mr. Samuel Untermyer, the counsel for the committee, at about the same time, condemned voting trusts in vivid language.[11]

This agitation was not without its effect upon the courts, and the decisions reflect its effect and consequences. At least two courts have adopted a point of view, as a result, which is unprogressive and reactionary, although it may reflect the popular whim and caprice of the passing moment.

In *Luthy* v. *Ream*,[12] the Supreme Court of Illinois, in 1915, had occasion to consider the validity of a voting trust of stock of the Peru Plow & Wheel Company, a corporation of the State of Illinois. The effect of the voting trust agreement, entered into by the majority of the stockholders of the company, was to place the legal title of the majority of the stock in one Ream, as voting trustee, who was given the power to vote the stock for a term of ten years upon all questions and at every meeting of the stockholders, according to his discretion. It was provided that, at all elections of directors of the company, the voting trustee should nominate three directors to be voted for at such election, and should vote all of the stock held by him as a unit for each and all of the directors so nominated by him. Some time subsequently, some of the stockholders sold their shares, and their vendee presented the trust certificate for the stock and demanded that a stock certificate should be issued for the shares of stock represented thereby. The corporation refused to issue such stock certificate, stating that the shares of stock were included in the trust agreement, and that it could not and would not issue a new stock certificate to the vendee for that reason. Whereupon, the vendee notified the corporation that, as owner of the shares in question, he withdrew them from the trust agreement and would no longer be bound thereby, and demanded that a stock certificate be issued to him free from any restraint, obligation or condition under such trust agreement.

It should be further noted that, after the sale of the shares in question, Ream, as voting trustee, no longer represented a majority of the stock, but only a minority.

The question was thus squarely presented to the court as to

[11]Untermyer, A Legislative Program, 25. Since then, Mr. Untermyer has also condemned what he terms "The vice of proxy voting," and suggests "the abolition of proxy voting." Untermyer, The Lawyer-Citizen—His Enlarging Responsibilities (a paper read at the annual meeting of the Commercial Law League, July 27, 1916).

[12](1915) 270 Ill. 170, 110 N. E. 373.

the legal validity of the voting trust agreement and the right of a stockholder, who was a party thereto, to withdraw therefrom within the time specified therein.

The Supreme Court of Illinois had previously held in several cases that it was legitimate and legal for the owners of a majority of the stock of a corporation to combine for the purpose of controlling the corporation.[13] In this Luthy case, however, the court held that the voting trust agreement was illegal and void, and that the holder of the voting trust certificate must be allowed to revoke the voting trust agreement, so far as he is concerned, at any time. This is a return to the point of view of the early decisions. It is a self-styled "progressive" point of view. It may be a popular point of view, but it is unsound logically, contrary to business needs and demands, and therefore, in truth, a reactionary and unprogressive point of view. The court's main argument was that it is unsound public policy for stockholders to be permitted to divest themselves personally of the rights to vote for a term of years and to confer the right to vote upon their trustees. Quoting from the opinion:[14]

> "The voting power of the stock is absolutely separated from its ownership for a term of years, so that the real owners of the property are during that time entirely divested of its management and control or of any participation therein. Our law contemplates that corporations shall be controlled by a majority of the stockholders acting through directors elected by them in person or by proxy, and it has been held that a by-law of a corporation which authorizes bondholders to vote for directors at stockholders' meetings is in violation of both the constitutional and statutory provisions requiring directors to be elected by a majority of the shares of stock of the corporation. (*Durkee* v. *People,* 155 Ill. 354.) *The power to vote for directors can be exercised only by stockholders in person or by proxy, and they cannot be deprived or deprive themselves of this power. Stockholders cannot evade the duty imposed upon them by law of using their power as stockholders for the welfare of the corporation and the general interest of its stockholders.* A stockholder may refuse to exercise his right to vote and

[13]Faulds *v.* Yates (1870) 57 Ill. 416; Venner *v.* Chicago City Ry. (1913) 258 Ill. 523, 101 N. E. 949.

[14]Luthy *v.* Ream, *supra,* footnote 12, at pp. 177-178, 180. The italics are ours.

participate in stockholders' meetings, but he cannot deprive himself of the power to do so.

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"A stockholder may ordinarily withdraw from a combination to control the majority of the stock of a corporation and a contract not to transfer his shares to the opposition or vote against the combination, although it is expressly agreed that the contract shall be irrevocable."

This is an argument which might very properly be addressed to a legislative tribunal, but which has no place in a court of law, and in particular, it has no place in a court which had hitherto held that stockholders have a common-law right to vote by proxy, even in the absence of statutory authorization.[15]

The Illinois court cited several early cases, including the early Shepaug Voting Trust Cases in Connecticut.[16] It then reached the following conclusion:[17]

"The principle to be deduced from these cases is that the holders of the majority of the shares of stock in a corporation may control its management, and every person who becomes an owner of stock has a right to believe that the corporation will, and to insist that it shall, be managed by the majority; *that the power to vote is inherently attached to and inseparable from the real ownership of each share, and can only be delegated by proxy, with power of revocation;* that each stockholder must be free to cast his vote, whether by himself or by proxy, for the best interest of the corporation, and that each stockholder has the right to demand that every other stockholder, if he desires to do so, shall have the right to exercise at each annual meeting his own judgment as to the best interest of all the stockholders, untrammeled by dictation, and *unfettered by the obligation of any contract.*"

The Illinois court, furthermore, expressly repudiated the sound decision of the Supreme Court of California in *Smith* v. *San Francisco & North Pacific Railway Co.*,[18] in which case it was held that an agreement by several purchasers of stock in

[15]People *ex rel.* Chritzman *v.* Crossley (1873) 69 Ill. 195.

[16]Bostwick *v.* Chapman, *supra,* footnote 1.

[17]Luthy *v.* Ream, *supra,* footnote 12, at p. 181. The italics are ours.

[18]*Supra,* footnote 4.

a corporation to vote it as a unit for five years, in accordance with the decision of the majority, is binding upon the parties and irrevocable. It also disapproved the decision of the Supreme Court of Virginia in *Carnegie Trust Co.* v. *Security Life Insurance Co. of America,*[19] in which case it was held that an agreement among stockholders to place their stock in the hands of voting trustees for twenty-five years to enable the trustees to manage the corporation, constitutes a valid trust. The decision of the Supreme Court of Illinois in the Luthy case marks a reversal of the court's own policy as indicated in its earlier decisions, although the court professed to be able to distinguish the earlier Illinois cases. The essence of the holding seems to be that the court believes that the power to vote stock is annexed to and inseparable from the beneficial ownership of each share of stock, and can be delegated only by revocable proxy. In fact, the language of the Supreme Court of Illinois, above quoted, is identical (though not quoted) with that used in an early decision in North Carolina.[20]

In the next year, 1916, a proposed plan of reorganization of the St. Louis & San Francisco Railroad Co. was presented to the Public Service Commission of the State of Missouri by J. & W. Seligman and Company and Speyer and Company, the reorganization managers. One provision of the plan, termed the "voting trust", under which it was proposed that the stock of the reorganized company should be held and voted by certain trustees for a period of five years, read as follows:[21]

> "The preferred and common stock of the New Company (except such number of shares as may be disposed of to qualify directors) shall be vested in the following voting trustees: Frederic W. Allen, George W. Davison, Seward Prosser, Charles H. Sabin, James Speyer, Frederick Strauss and Festus J. Wade.
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> "In the event of the death or failure or refusal to serve of any person designated as a voting trustee prior to the creation of the voting trust, the vacancy shall be filled by the reorganization managers. The stock shall be held by the voting trustees,

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[19] *Supra,* footnote 9.

[20] See language of Clark, *J.,* in Harvey *v.* Linville Improvement Co., *supra,* footnote 1, with which compare the language of Dunn, *J.,* in Luthy *v.* Ream, *supra,* footnote 12.

[21] *In re* St. Louis & S. F. R. R. Reorganization (1916) 3 Mo. Pub. Ser. Comm. 664, at p. 707.

and their successors, jointly (under a trust agreement prescribing their powers and duties and the method of filling vacancies), for five years, although the voting trustees may, in their discretion, deliver the stock at an earlier date. Until delivery of stock is made by the voting trustees, they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, on payment of any taxes in connection with the surrender of voting trust certificates and the transfer and delivery of stock certificates, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon the number of shares therein stated, which shares, however, with the unrestricted voting power thereon, shall be vested in the voting trustees until the stock shall be delivered, as provided in the trust agreement and in the voting trust certificates issued thereunder."

The reason for making this voting trust scheme a part of the plan of reorganization was stated by one of the reorganization managers, as follows:[22]

"Q. What special reasons were there for a desire on the part of the present bondholders to place the stock in a voting trust?

"A. The refunding bondholders and general lien bondholders, both, naturally felt that they should have a voice in the management of the property when they were asked to make sacrifices for the benefit of the stock and for the benefit of the property generally. The refunding 4s had the biggest part of the total bond issue of eighty-five million dollars. They took instead only three-quarters of the principal in the new four per cent bond, the rest being taken as a contingent charge, and the issue of which they were asked to have a part is now raised to $250,000,000. They felt as they were enlarging the amount of the mortgage and providing for the future capital of this road, that they were making a sacrifice of a fixed interest bearing obligation, in part at least, for a contingent one, and that they should have a voice in the property. The same thing applies with even greater force to the general liens because they were still taking a greater part of their principal in contingencies, contingent charges, so we thought the fairest way to do would be to take two representatives from each of the three important classes of securities, the two bonds and the stock and apportion that stock

[22] At p. 708.

> representation partly east and partly west as the stock is held partly in the east and partly in the west, and then appoint a seventh man in the manner I have just described.
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> "It was thought that Mr. Allen (seventh member) would represent in an admirable manner the eastern part of his own firm and eastern investors on the one hand and in a measure also the west."

It thus appears that four of the seven trustees named were selected to represent the bondholders, two to represent the stockholders, and one to be "regarded as a sort of neutral". Bearing in mind that the bondholders were vitally interested, because of the sacrifices which they were making for the benefit of the railroad property, and for the general good, it would seem that the reorganization plan was just and reasonable.

The Public Service Commission of Missouri, however, relying upon the early Shepaug Voting Trust Cases,[23] held "that the voting trust provided for in the plan of reorganization is against the public policy of this State."[24] Accordingly, it was rejected as invalid and void. Subsequently, the personnel of the trustees was changed, and an application was made to the commission for a rehearing and re-consideration. The commission stated that the change of trustees did not relieve the voting trust of its objectionable features, saying:[25]

> "The serious objection to the voting trust feature of the original plan of reorganization was that it placed the selection of the voting trustees, and consequently the election of the board of directors and the management and control of the company, in the hands of the bondholders instead of the stockholders, as provided by the Constitution and law of this State. The modified plan now considered proposes the substitution of the two names of voting trustees in lieu of two named in the original plan, but makes no change whatever as to the method of the selection of the trustees. It is apparent that a change of trustees does not relieve the voting trust of the objectionable feature to which attention was called in the former opinion. The Commission did not object to the personnel of the trustees first named, but rather to their selection by the bondholders, and as to that feature no change has been made in the plan as modified."

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[23]Bostwick *v.* Chapman, *supra*, footnote 1.

[24]At p. 712.

[25]*In re* St. Louis & S. F. R. R. Reorganization, *supra*, footnote 21, Supplemental Report of the Commission, at pp. 720-721.

The commission, accordingly, again disapproved the voting trust provision submitted in the plan of reorganization.

It thus appears that the agitation and crusade of the years 1912-13 were not without their effect upon the courts. The Supreme Court of the State of Illinois, we find, practically reversed itself, and we find the Public Service Commission of the State of Missouri taking a similar positive and unqualified position in opposition to the validity of the voting trust or pooling agreement. This attitude was taken in spite of the fact that the federal court for the southern district of New York, in working out a dissolution plan of the New Haven Railroad, recently created voting trusts consisting of three sets of trustees, each consisting of five members, a circumstance of much significance, since the voting trusts were created by the express mandate of the federal judiciary.

On sound principle, it is submitted that there is nothing about voting trusts which should cause courts to hold them illegal *per se.* It is submitted, on the contrary, that each and every argument urged against the validity of voting trusts is specious.

It has been urged that each holder of shares is entitled to the personal judgment and to the personal vote of all the shares. This is the argument of the Shepaug Voting Trust Cases, adopted recently, as we have seen, by the Supreme Court of Illinois and by the Public Service Commission of Missouri, and approved by the courts of North Carolina. Mr. Untermyer takes the same position.[26] From a practical standpoint, this argument amounts to nothing, because of the huge size of modern corporations. Is it feasible to hold a mass meeting of ten thousand stockholders? Is it practicable to hold a mass meeting of the ninety thousand stockholders of the Pennsylvania Railroad Company? Is it possible to obtain an army cantonment wherein to assemble the legions who constitute the stockholders of the United States Steel Corporation? This very practical consideration nullifies the argument that every stockholder is entitled "to the judgment of each individual stockholder". When it is said that the stockholder of a corporation is entitled to the benefit of the judgment of each and every other stockholder in the management of the corporate affairs, it cannot be meant, moreover, that a stockholder is entitled to hamper in any way the free and honest exercise of the judgment of his fellow-stockholders. Each stockholder may act as he chooses. It follows that the question is whether it is unlawful to contract to do what it is perfectly lawful to do. Why cannot

[26] See footnote 11, *supra.*

stockholders, consistently with sound public policy, in order to secure a reorganization of their corporation, and the securing of a necessary loan, vest the management of the corporation in hands satisfactory to the banking interests, which lend the money, and for a term commensurate with the loan? Again, why cannot a group of stockholders combine for a term of years and make their union effective by means of the simple device of a voting trust? A trust may be created of any other kind of personal property, and why not, therefore, of shares of stock? It is nothing short of foolish for a court or for a jurist to speak of the "obligation" of stockholders to assemble together at the time of a corporate election. Under modern conditions, this is as unreasonable as it is impossible in many cases. But in spite of these hard, practical considerations, altruistic visions and ideals of stockholders' meetings similar to New England town meetings are still indulged in by some courts and persisted in.

It has also been urged that voting trusts are invalid *per se* because they suspend the power of alienation. There seems little in this objection. In almost every known instance of voting trusts, there is no period when the outright conveyance of the stock may not legally and validly be made.

The Supreme Court of Illinois has urged, following the early cases, that the voting power should not be separated from the stock ownership and argues that, therefore, voting trusts are illegal. In the first place, this argument is based upon an unsound premise, because in the case of most voting trusts, the voting power follows the legal ownership of the stock. The legal title to the stock is in the voting trustees, and they have the power to vote it. In the second place, why cannot a stockholder give another person a power over, or right in, his shares of stock in a corporation in the same way and to the same extent that he might give rights in any other personal property?

It has also been urged that voting trusts are mere "dry trusts" and, therefore, stockholders may revoke them, though they are in form irrevocable. In the case of most voting trusts, however, the trust is an active one. Besides, as suggested by Chief Justice Holmes, "It might be held that the duty of voting incident to the legal title made such a trust an active one in all cases."[27] The doctrine as to dry trusts, therefore, does not apply in these cases.

It has also been objected that the voting trust is a method of trying to evade the statutory rule, which usually exists, forbidding the creation of proxies for longer than a certain given term. The

[27] Brightman *v.* Bates *supra*, footnote 4, at p. 111.

answer to this contention is very simple. The voting trust is not a mere proxy, but is a change of legal title in and to the stock. It is an outright conveyance of the stock, conditioned upon certain covenants made by the voting trustees and certain duties imposed upon them.

The argument has also been advanced that voting trusts are undemocratic".[28] This is the "public policy" argument in another form. It is readily answered. A majority of individual stockholders may be destroyed at any moment, provided that a single interest buys a sufficient amount of stock. The unit of corporate control is the *share of stock,* rather than the *individual stockholder.* A majority means a majority in interest, not in number. Moreover, this objection is met by the terms of most voting trusts, which provide that any other stockholder may participate in the terms, conditions and privileges of the voting trust agreement; and in New York this is expressly provided for in the statute, adopted also in Maryland, which regulates the subject of voting trusts and pooling contracts.

Thus it appears that voting trusts should not be held illegal *per se.* Even a number of the cases which hold particular voting trusts to be invalid, usually recognize the proposition that there may be a valid voting trust.[29]

It is submitted that, on sound principle, voting trusts and pooling agreements should be upheld as valid and legal, provided that the propriety of their object and the good purpose of their creation affirmatively appear. In other words, the voting trust should not be condemned *per se.* The validity of the trust should be made dependent upon the purposes for which the trust is created, the powers that are conferred, and the propriety of the objects in view. If the pooling, or combining, or trust is designed to carry out a particular corporate policy with a view to promote the best interests of the corporate body of stockholders, the agreement should be upheld as valid. On the other hand, where the voting trust or pooling agreement is created to consummate an unfair or monopolistic purpose, it should be condemned.

Many apparently conflicting decisions are reconcilable under this test and when the purposes of the voting trust or pooling agreement in each particular case are scrutinized carefully. As said in 1912 by the highest court of Vermont:[30]

[28]See paper by Ex-Judge Simeon E. Baldwin, 1 Yale Law Journal 1, 15.

[29]See Kreissl *v.* Distilling Co. of Am. (1900) 61 N. J. Eq. 5, 47 Atl. 471.

[30]Thompson-Starrett Co. *v.* Ellis Granite Co. (1912) 86 Vt. 282, at p. 289, 84 Atl. 1017. The italics are ours.

> "The defendant says that the agreement referred to amounts to a voting trust, and is therefore illegal and void. But this result does not necessarily follow. Such agreements are not illegal *per se*. *Their validity depends upon the purposes they are designed to observe*. Where these purposes are lawful, stockholders may, in the absence of constitutional or statutory restrictions, suspend for a time the right to vote their stock and vest it in others who have a beneficial interest in it or the corporate business,—as corporate creditors or a trustee for them."

And as said by the highest equity court of New Jersey in 1900:[31]

> "whether the transaction is open to the objection of other stockholders, as depriving them of the right they have to the aid of their co-stockholders, *must be dependent upon the purposes for which the trust was created, and the powers that were conferred.*"

To summarize. It is unsound to hold that "all agreements and devices by which stockholders surrender their voting powers are invalid." It is unsound to hold that voting trusts are void *per se,* as opposed to good public policy. Such a point of view is surely unprogressive. It ignores business necessities. It disregards economic considerations. It shuts its eyes to business actualities. While it is true that many of the early cases adopted this attitude, it would be most unfortunate for the courts again to swing around to it. That there is some real danger of their doing so, is illustrated by the recent decisions in such powerful jurisdictions as Illinois and Missouri.

The correct rule to adopt is to uphold the legality of the voting trust or pooling agreement, provided the propriety and reasonableness of its object affirmatively appear, and provided that the arrangement itself is honest and equitable. The voting trust, in other words, should not be condemned as void *per se,* but should only be condemned in those instances where the trust or pooling agreement is created and carried out in order to effectuate an improper, unjust, or monopolistic object. The writer submits that in jurisdictions, unlike New York and Maryland, where this subject is not yet regulated by statute, this course is the sound, logical and just one for the courts to adopt.

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[31]Kreissl *v.* Distilling Co. of Am. *supra,* footnote 29, at p. 14, *per* Magie, *Ch.* The italics are ours.